

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**LABORERS' PENSION FUND and)
LABORERS' WELFARE FUND OF THE)
HEALTH AND WELFARE DEPARTMENT)
OF THE CONSTRUCTION AND GENERAL)
LABORERS' DISTRICT COUNCIL OF)
CHICAGO AND VICINITY, and JAMES S.)
JORGENSEN, Administrator of the Funds,)**

**Plaintiffs,)
v.)**

AYALA BROS. CONSTRUCTION CO., INC.,)

Defendant,)

and)

**BANCO POPULAR N.A.,)
Third Party Citation Respondent.)**

Case No. 08 C 1559

Judge Holderman

MOTION FOR TURNOVER ORDER

Plaintiffs Laborers' Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity, and James S. Jorgensen, (hereinafter collectively referred to as "Funds"), by and through their attorney, Jerrod Olszewski, hereby move for a Turnover Order directing Third Party Citation Respondent Banco Popular N.A. to turn over the amount of \$1,508.66 in partial satisfaction of the Judgment entered by this Court on May 6, 2008. In support of this Motion, Plaintiffs state as follows:

1. On May 6, 2008, this Court entered judgment in Funds' favor and against Defendant Ayala Bros. Construction Co., Inc. in the amount of \$8,250.57. The remaining balance owed on the judgment is \$8,250.57.

2. A Citation to Discover Assets was issued against Banco Popular N.A. on May 21, 2008, naming Defendant as the Judgment Debtor. A true and accurate copy of the Citation is attached hereto as Exhibit A.

3. Third Party Citation Respondent Banco Popular N.A. responded on June 4, 2008, indicating that it was holding funds in the amount of \$1,508.66 pursuant to the Citation. A true and accurate copy of Banco Popular N.A.'s Citation Answer is attached hereto as Exhibit B.

4. Accordingly, Plaintiffs request that this Court order Third Party Citation Respondent Banco Popular N.A. to turn over the amount of \$1,508.66 currently being held by it pursuant to Citation, to the Funds in partial satisfaction of the Judgment entered by this Court on May 6, 2008.

WHEREFORE, Plaintiffs respectfully request that this Court enter a Turnover Order directing Banco Popular N.A. to turn over the amount of \$1,508.66 to the Funds in partial satisfaction of this Court's May 6, 2008 Judgment.

June 25, 2008

Respectfully submitted,
Laborers' Pension and Welfare
Funds

By: /s/ Jerrod Olszewski

Jerrod Olszewski
Office of Fund Counsel
111 W. Jackson Blvd., Suite 1415
Chicago, IL 60604
(312) 692-1540

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LABORERS' PENSION FUND, et al.,)	
Plaintiffs Judgment Creditors,)	
v.)	
)	
AYALA BROS. CONSTRUCTION CO., INC.,)	Case No. 08 C 1559
Defendant Judgment Debtor,)	
and,)	Judge Holderman
)	
BANCO POPULAR N.A.,)	
Third Party Citation Respondent.)	

THIRD PARTY CITATION TO DISCOVER ASSETS

Address of Judgment Debtor:	Name and Address of Attorney for Judgment Creditors
Ayala Bros. Construction Co., Inc.	Jerrold Olszewski, Office of Fund Counsel
c/o Gerardo Ayala, President	LABORERS' PENSION AND WELFARE FUNDS
3600 S. Albany	111 W. Jackson Blvd., Suite 1415
Chicago, IL 60632	Chicago, IL 60604

Amount of Judgment: \$8,250.57 (Judgment Order dated May 6, 2008)

TO: Banco Popular N.A., c/o Mr. Richard L. Carrion, Chief Executive Officer,
9600 West Bryn Mawr, Rosemont, IL 60018

Return date and time: Tuesday, June 10, 2008 at 1:00 p.m.

Location: Laborers' Pension and Welfare Funds, Office of Funds Counsel, 111 W. Jackson
Blvd., Suite 1415, Chicago, IL 60604, (312) 692-1540

**YOUR FAILURE TO APPEAR AS HEREIN DIRECTED MAY CAUSE YOU TO BE
ARRESTED AND BROUGHT BEFORE THE COURT TO ANSWER TO A CHARGE
OF CONTEMPT OF COURT, WHICH MAY BE PUNISHABLE BY IMPRISONMENT**



THIRD PARTY DEPONENTS: YOU MAY NOT NEED TO APPEAR. Plaintiffs reserve the right to take the Citation deposition, but may discharge you from appearing upon review of the documents requested. Please contact Plaintiffs' attorney to discuss fees, if any, for documentation requested prior to copying and sending documents.

THIS COURT HAS ISSUED A CITATION AGAINST the person or party named above. This Citation directs you to appear before the above named attorney for the Plaintiffs, at 111 W. Jackson Blvd., Suite 1415, Chicago, IL 60604 on the return date stated above, to be examined under oath concerning the indebtedness owed to the Plaintiffs. This Citation is issued on the basis of a judgment against the Judgment Debtor in favor of the Judgment Creditors in the amount stated above. On or after the return date stated above, the Court may compel the application of any discovered income or assets toward payment on the judgment.

At the examination, you are commanded to produce with respect to the Judgment Debtor the following:

Any funds held by the Judgment Debtor and, should there be no funds, all documents reflecting the financial status of the Judgment Debtor.

YOU ARE PROHIBITED from making or allowing any transfer or other disposition of or interfering with any property not exempt from execution or garnishment belonging to the Judgment Debtor to which the Judgment Creditors may be entitled or which may be acquired by or become due them and from paying over or otherwise disposing of any money not so exempt, which is due or becomes due to him until the further order of Court or termination of proceedings. You are not required to withhold the payment of any money beyond double the amount of the judgment.

The amount of income or assets that may be applied toward the judgment is limited by

the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, 20th Floor, Chicago, Illinois 60604. When so notified, the Clerk of the Court will obtain a prompt hearing from the Court and will provide the forms that must be prepared by the Judgment Debtor and sent to the Judgment Creditors and the Judgment Creditors' attorney regarding time and location of hearing. This notice may be sent by registered or first class mail regarding time and location of the hearing. This notice may be sent by registered or first class mail.

Michael W. Dobbins
CLERK OF COURT

Yvette Montanez
DEPUTY

May 21, 2008

DECLARATION AND CERTIFICATE OF JUDGMENT CREDITORS

I, Jerrod Olszewski, attorney for the Judgment Creditors, certify to the Court under penalties As provided by law pursuant to 735 ILCS 5/1-109, that the following is true:

1. Judgment Amount: \$8,250.57
2. Balance Due: \$8,250.57
3. Date of Judgment: May 6, 2008
4. Case Number: 08 C 1559
5. Court Name: U.S. District Court for the Northern District of Illinois, Eastern Division.

Jerrod Olszewski
May 21, 2008

Jerrod Olszewski
Laborers' Pension and Welfare Funds
Sub Office, 111 W. Jackson Blvd.
Suite 1415
Chicago, IL 60604
(312) 692-1540
(312) 692-1489 (FAX)

~~BAKER, MILLER, MARKOFF & KRASNY, LLC~~

ATTORNEYS AT LAW

KENNETH BAKER
DAVID S. MILLER
ROBERT G. MARKOFF
JAMES R. KRASNY
KEVIN W. MORTTELL
JAMES A. KAPLAN
THOMAS GEARHART

FAX COVER PAGE

IMPORTANT NOTICE: The information contained in this facsimile message is attorney privileged and confidential information intended for the use of the individual or entity named below. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this fax in error, please immediately notify us by telephone and we will arrange to have it returned to us at our expense. Thank you.

DATE:

6/7/08

NO. OF PAGES INCLUDING THIS PAGE:

3

TO:

Jerrod Olszewski

FIRM:

FAX NO:

312-692-1489

IF YOU DID NOT RECEIVE EVERY PAGE PLEASE CALL THE FOLLOWING NAMED PARTY OF OUR OFFICE AS SOON AS POSSIBLE AT (312) 541-4100.

FROM:

Jeff Malachuk

COMMENT:

Dear

EXHIBIT

B

MAY-28-2008 13:04 From: BANCO POPULAR

8479945449

To: 3125414125

P.3/7

RECEIVED Roberto R. Herencia		
MAY 23 2008		
Ans.	File	Ref. To:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LABORERS' PENSION FUND, et al.,)	
Plaintiffs Judgment Creditors,)	
v.)	
)	
AYALA BROS. CONSTRUCTION CO., INC.,)	Case No. 08 C 1559
Defendant Judgment Debtor,)	
and,)	Judge Holderman
)	
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Third Party Citation Respondent.)	

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Ayala Bros. Construction Co., Inc.	Jerrold Olszewski, Office of Fund Counsel
c/o Gerardo Ayala, President	LABORERS' PENSION AND WELFARE FUNDS
3600 S. Albany	111 W. Jackson Blvd., Suite 1415
Chicago, IL 60632	Chicago, IL 60604

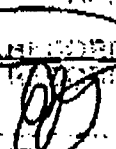
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RECEIVED
MAY 27 2008
BY: 

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case No. 08 C 1559Return Date 6/10/08

ANSWER OF THIRD PARTY RESPONDENT / GARNISHEE DEFENDANT

ROBERT G. MARKOFF certifies under penalty of perjury pursuant to §1-109 of the Illinois Code of Civil Procedure that the following statements are true and correct:

- I. ☐ Respondent has no property of the Defendant in its possession.
- II. ☐ Respondent has no knowledge of any assets or income belonging to the Defendant.
- III. ☒ Respondent has property that belongs or may belong to the Defendant as follows:

	DEFENDANT'S BALANCE	AMOUNT WITHHELD
A) Savings Account \$		
B) Checking and/or Now Account \$	<u>1508.66</u>	<u>1508.66</u>
C) Certificate of Deposit \$		
D) Money Market Account \$		
E) Trust Account \$		
F) Wages, Salary or Commissions \$		
G) Safety Deposit Box		
H) Land Trust No.		
I) Other Property (Describe)		
J) Additional Information Relating to Debtor's Property:		

1. Adverse Claimant: Name _____ Address _____
2. Right of Set Off: Basis _____ Amount: _____
3. Exemption: Basis _____ Amount: _____

Total of funds in Respondent's possession available to be applied to the judgment: \$ 1508.66

According to the records maintained by the Respondent, the above information is correct as of this date 5/28/08

A copy of this Answer was mailed to the Defendant.

Respondent/Agent (Type or Print):

Agent Name ROBERT G. MARKOFF

Business Name BAKER, MILLER, MARKOFF & KRASNY, LLC

Address 29 N. WACKER DRIVE, 5th FLOOR

CHICAGO, IL 60606

Phone (312) 698-7263

Fax (312) 698-7325

[Signature]
Agent for Respondent / Garnishee

NOTE: A copy of this Answer should be mailed to the Court, Attorney for Plaintiff or Judgment Creditor and to the Defendant.

If necessary, you may attach further information or explanations as may be required to answer the Citation To Discover Assets.

CERTIFICATE OF SERVICE

The undersigned attorney of record certifies that he caused a copy of the foregoing Motion for Turnover Order to be served upon the following persons via U.S. first class mail, postage prepaid, this 26th day of June, 2008:

Ayala Brothers Construction
3600 S. Albany
Chicago, Illinois 60632-2309

Robert G. Markoff
Baker, Miller, Markoff & Krasny, LLC
29 N. Wacker Drive, 5th Fl.
Chicago, IL 60606

/s/ Jerrod Olszewski

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Third Party Citation Respondent.)**

Case No. 08 C 1559

Judge Holderman

TURNOVER ORDER

This matter having come to be heard on Plaintiffs' Motion for Turnover Order, due notice having been given and the parties having an opportunity to be heard, IT IS HEREBY ORDERED:

1. That the sum of \$1,508.66 being held pursuant to Citation by Third Party Citation Respondent Banco Popular N.A. be released and turned over to Plaintiffs Laborers' Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity, and James S. Jorgensen, in a check made payable to the "Laborers' Pension Fund."

DATED: _____

ENTERED:

Honorable James F. Holderman
U. S. District Court Judge